

ART. IX.—*Contributions to Legal Medicine*. By ARISTIDE RODRIGUE, M. D.

CASE I.—*Commonwealth vs. Jeremiah Wilson Porter; Indictment for Fornication and Bastardy. January Term, 1844: for Cambria County, Pa.* Defendant plead “not guilty.”

The ground on which the defence rested was “protracted gestation,” the term extending to 317 days, from Sept. 24th to Aug. 7th. The following testimony was produced.

Margaret Shoup, sworn :—I am a single woman ; I am 23 years of age. I am the mother of a female child ; it was born the 7th of August, 1843 ; Jeremiah Wilson Porter is its father ; the child is living. It was begotten on the night of the 24th of September he had connection with me more than once, not more than twice that night ; it was three or four weeks after the connection that I knew I was pregnant. I had connection with no other man after that—I never had connection with any man before that ; I was in bad health ; my courses stopped about three weeks after the connection ; *they appeared again about* five weeks before the child was born—they did not appear before that ; lasted two days—there was not the usual quantity ; about this time, five weeks before the birth of the child, I was very sick ; had pains which continued for a long time ; I had the pains frequently after this up to the birth of the child.

Catherine Shoup, sworn :—My sister was sick from the 19th January, 1843, till the birth of her child. Dr. Phytian said she had liver complaint ; she quit taking medicine the last of June.

Dr. Rodrigue, affirmed.—Have been in practice since I graduated, 19 years since ; have attended several hundred cases of midwifery ; in my own practice the longest period was upwards of 10 months, have frequently met with cases of protracted gestation beyond the ninth month ; it is considered no uncommon occurrence. I have met with several cases (a few weeks, two weeks). I take the pains spoken of to be an attempt at labour.

Cases of protracted gestation are met with in young women ; can't say whether they are more numerous after the first birth. The ordinary period is from 270 to 280 days ; the birth of the child will occur in or about nine calendar months.

No testimony was produced by the defendant except to prove his absence shortly after he had connection with the girl, and that he did not return until after the birth of the child. He was counseled not to compromise with the female, as the extended term would clear him.

No evidence was produced to impeach the character or conduct of the female ; but, on the contrary, she invariably bore a good reputation, and it

was also proved that under promises of marriage the plaintiff had yielded to the desires of the defendant.

The court charged the jury strongly in favour of the medical testimony concerning protracted gestation, and the jury, after retiring for a short time, brought in a verdict of "guilty" against the defendant.

There was a circumstance which tended strongly to dispose the jury to admit the case of protracted gestation; among their number were two married men, who stated that their wives always went beyond the usual term of nine months, and on one occasion one went beyond ten months.

Among several other cases which have since come to my knowledge, I may mention the following: Elizabeth Marks, a married woman, at the age of about 36 years, went 11 months with one of her children. Her account is, "that she missed her menstrual period in the beginning of November, (had been regular before), quickened* on the 4th of March; took ship to come to America on the 25th of same month; was very sick during the whole passage, which was a very long and boisterous one; and on the Monday before the October court of Cambria county, was delivered of her child, being altogether at least 320 days.

CASE II.—Commonwealth vs. Bernard Flanagan and Patrick Flanagan. In the Court of Oyer and Terminer, Cambria county, Penna. October Term, 1842: Indictment for Murder.

Bernard and Patrick Flanagan were arraigned on the 5th of October, 1842, upon an indictment for the murder of Elizabeth Holder by strangulation or choking, by striking with a tongs, &c., a charge to which they plead "not guilty."

It appeared in evidence that on the night of the 31st July, cries of murder and screams were heard proceeding from the house of Elizabeth Holder, by Mr. Rainey, a neighbour; the cries seemed stifled as one strangled or choked; he, and a boy living with him, went down near to the house, and hearing the voices of men in the house and fearing to go in, proceeded to another neighbour's house, Wm. Wherry, and having procured his assistance, returned; shortly after two men were seen to issue from the house; one had neither coat nor hat on, and the other had a coat but no hat on,—one was taller than the other—one said to the other "down the road;" the accent denoted an Irishman. They were followed a short distance, when they turned into the woods; the night, though dark, was sufficiently clear to distinguish objects.

Upon the return of the neighbours, and entering the house, the body of

* Quickening, apart from other evidence, would not, in my opinion, be positive testimony of a female being four months with child; for I am acquainted with a lady who invariably quickens at two months, going full seven months after with all her children, now five in number.

E. H. was found lying partly on the floor and partly on the upper portion of the door, which had been broken off; she was in her night dress, lying on the left side of her face, with one or both arms crossed under her chest; her hair was in disorder and around her face; a wound upon the head and marks of fingers on the throat and mouth; some of her hair in the joints of a heavy pair of tongs lying near her; signs of evacuations from the body about the room and near her. She was quite dead; the house was in the greatest disorder; the bed was pulled to pieces; the drawers and chests broken open, and their contents lay scattered on the floor.

Pursuit was made the next day, and the prisoners seen at different times and places, making their escape separately from the neighbourhood; they were finally taken, Patrick in Centre county, and Bernard in Clarion. Their hats and coats were found the day after the murder near the house.

The following evidence was adduced on the trial.

On the 26th or 27th July the prisoners left Centre county in obedience to the request of the brothers, to withdraw some property from the county, and to stay away until after the court, as there was a warrant out for them for resisting the sheriff in the execution of his office.

On the afternoon of the 30th they made their appearance in the neighbourhood of the Cottage Tavern in Huntingdon county, a few miles above Hollidaysburg, put their horses to pasture and stayed at the tavern all night, and said they were going to Pittsburg to purchase horses; they were next seen at the summit, nine miles from Ebensburg, Patrick being recognized on the trial by Wm. B. K. Johnston, Patrick telling him there they were returning from Ohio; they were recognized as being next at Munster, a small village three miles from E. H.'s house, between Munster and Ebensburg,* there meeting with a man named Evans and drinking together at a tavern; in company with Evans they proceeded on to Wm. Wherry's Tavern; passing E. H.'s house, which is only a few hundred yards from Wm. Wherry's; there they again drank, and Wm. Wherry, at the trial, identifies them as the persons who were in his house that evening, and the clothes and hats produced in court, he testifies to as being worn by the prisoners on that day. They leave Wherry's, Evans going home and the prisoners taking the direction of Ebensburg, but not going there. That night the murder was committed.

Several witnesses testified to admissions made by the prisoners both before and after their arrest, which strongly implicated them in the murder.

An inquest was held the morning after the murder, and a verdict of murder by person or persons unknown. On the same day a post-mortem examination was made by Dr. A. Rodrigue, assisted by Dr. Wm. Smith. The examination was made by order of two justices of the peace; it was

* Elizabeth Holder resided about one and a half miles east of Ebensburg, Cambria county, on the northern turnpike leading from Harrisburg to Pittsburgh.

neither so perfect nor minute as we could have wished, the epidemic dysentery was prevailing to a great extent and severity in the neighbourhood, and our time was too limited; besides, a mob of women and friends had assembled outside of the house, determined to oppose us in our examination, which was hastily carried on in a small room filled with persons, whom we had introduced to assist us in repelling any attack.

Dr. Rodrigue testifies "on the afternoon of the 1st May, I made a post-mortem examination of the body of Elizabeth Holder. The general appearance of the body was rigidity of all the limbs; no evacuations from the body; (had been washed and laid out); deceased appeared to have been between 50 and 60 years of age, of a robust frame; the fingers were bent towards the palms of the hands; general pallid appearance of the body, except the face, neck and back; the discoloration on the back was produced by settling of the blood; the face was swelled, livid and puffed up—bloated; the jaws were tightly closed, with the tongue slightly between the teeth; the eyes protruded and staring; pupils dilated; eyes a little bloodshot; a great deal of discoloration about the face and neck, livid and dark-coloured; marks of two fingers on the left cheek, and a livid, dark-coloured tumour on the left side of the neck under the ear, produced by blood accumulating in that part, of recent formation; the lips were swollen, of livid dark-colour; blue, as well as the tongue; the inside of the lips and mouth was of the same dark colour; very offensive fetor from the mouth; a little, frothy bloody mucus or saliva from the mouth; the neck was swollen and much discoloured from the blood settling in it; an infiltration of blood in the different parts of the skin exhibited an appearance of bruises and different marks of fingers; marks of finger nails or some sharp, half rounding instrument immediately on the neck, (apple of the neck,) more on the right and some on the other side of the neck; can't tell how many finger marks; a good many slight bruises and marks I attributed to fingers; on laying back the skin I discovered extravasation produced by pressure or contusion; swelled as well as extravasated; found a good deal of extravasation in the cellular membrane; a thin substance connecting the skin to the muscles and connecting muscles, this being a loose substance, whenever there is a rupture of a blood-vessel the blood finds easy access through this; showed the cause of the swelling; minute injection of all the veins and capillary vessels; firmness and resistance of the parts much increased, much more so than are usually found in dead bodies; are occasioned by contusion; much extravasation of blood in the muscles; muscles darker colour than natural; the windpipe red and injected; blood forced into it; all the veins of the neck were so turgid and full that it interfered very much with our dissection from the profuse bleeding; frequently had to tie them up; no particular marks of external violence on the chest; but upon opening the chest the lungs were found to fill the whole cavity; they were excessively gorged with blood, mucus and air. The heart appeared distended, filled up with blood; the veins of the heart most extraordinarily so; did not open the heart; it exhibited great firmness or hardness, as if the cavities of the heart were filled with blood; all the veins of the chest very much distended with blood; the head thickly covered with hair; on laying back the scalp, we discovered three severe bruises, one over the left parietal bone; one behind the right ear, a little above and behind the right ear, and one over the right eye; this last the most severe; two or three less bruises of minor consequence, did not consider material; on removing the skull cap (the

bone), which was rather thin, we found an old adhesion of the dura mater (a parchment-like skin) to the bone. It is the membrane that covers the brain; the vessels of the brain were unusually turgid; very much distended and filled with blood; a small clot of blood found on the right top of the brain, above the contusion not under it; no extravasation, no effusion in any of the ventricles or cavities of the brain; a slight effusion of serum or light-coloured water on the base of the brain outside of the dura mater. I attributed that to a rupture in opening the brain; might have been a slight effusion before; the colour and quantity would be increased by the rupture. I believe that the evidence of death in this case to be that of strangulation; from the post-mortem examination. I think none of the marks of violence on the head sufficient to produce death. The unusual turgid state of the lungs and their filling the whole cavity of the chest would be produced by the obstruction of the air-passage, arresting the air to the lungs; but in this case I have every reason to believe the obstruction of the air-passage was not complete at first. Some air passing back and forwards, mere occlusion of air would produce this turgid appearance of the lungs and veins; generally speaking, strangulation makes the eyes blood-shot, protruding and staring; makes the face distorted and livid, and the blood running in it; this is produced by pressure on the external veins of the neck; as soon as the blood in the lungs is deprived of air, vitality ceases; the circulation continued some time after the pressure; may find upon examination that no blood is in the veins. In this case, I suppose the windpipe was not completely closed, and the venous circulation went on till death took place; the heart was firm. I had no doubt as to the producing cause of this death or I would have made further dissection. I examined all the organs necessary to satisfy myself. I believe it was strangulation. Relaxation of the sphincters take place, and evacuations take place; the contents of the bowels are generally expelled; generally about the time death takes place the sphincters are relaxed; generally observed it so. Did not examine those organs. I was satisfied from the other appearances, and did not wish to subject the body to any unnecessary exposure and examination. I am a regular graduate as a physician. I have performed post-mortem examinations in cases of violent deaths, but not in cases of strangulation.

Cross-examined.—Have examined cases of death from injury on the brain and from poisoning; the contents of the stomach and bowels—can't say how many examinations of injury on the brain I have witnessed, but a great many in the country and in Philadelphia. I derive my knowledge from my profession and the practical knowledge of others and myself. I have not before examined a person strangled to death. Have drawn my conclusions from the conclusions of others learned in the profession; Beck's Medical Jurisprudence is a work of high authority.

Strangulation may produce apoplexy in one way, that is, apoplexy by full turgid appearance of the brain, but not the morbid appearance that generally leads to apoplexy; anything that causes determination of blood to the head may cause apoplexy, if the patient be predisposed to it. I can hardly say an unusual determination of blood to the head would cause apoplexy without predisposing causes; hereditary disposition is one. Inflammation or irritation of a peculiar kind another; relaxation or debility of these vessels when there is an opportunity for predisposing causes, at fifty is more usual; age may develop these causes, but age alone is not sufficient; other diseases may be developed at that age, and that would be a safeguard against apoplexy; hemorrhoidal discharges may act as a drain,

and the suppression of these discharges may occasion disease in other parts, as a predisposition to consumption. There is a distinction between sanguineous apoplexy and a serous apoplexy; the latter is from a relaxation. In the case of apoplexy I would look for effusion in the ventricles. It is generally so; Beck gives one instance where there was none; but I can't say, that, apoplexy. The examination was in the afternoon; some delay in consequence. In apoplexy always a determination of blood to the brain during life; when the post-mortem examination is deferred for length of time, in some cases, no cause can be discovered for the death; most writers who have made extensive examinations give a few cases as exceptions to the general appearances; the vascular turgescence in the brain may subside in a few hours, but then the whole system puts on the same appearance; you cannot find *any* morbid appearance. It is a peculiar habit of that body. In such cases the examiner will generally make a report that there is no morbid appearance to warrant death, and they are unable to ascertain what caused death; concussion of the brain, spinal marrow may take place and no morbid appearance observed; most generally so in concussion, but it is generally otherwise in apoplexy. In cases of concussion no morbid appearance; anything that causes suspension of respiration occasions determinations of blood to the brain, provided it be continued long enough and not momentary; turning of the head where there was a disposition to apoplexy may occasion it; but the individual has generally been unwell previously; suppression of respiration would be the cause of apoplexy. If the circumstances warrant it, I would swear positively to what I see. The vessels of the brain were unusually turgid and filled. Those are not evidences of apoplexy but of congestion. It is one of the evidences of death by suppression of respiration from violence, a small clot of blood on the right hemisphere of the brain, frequently found in apoplexy, but as frequently found in the substance of the brain as on the surface; if it be in the centre of the brain it may produce sudden death; the blood was in a fluid state. Think in apoplexy the blood would be found in a fluid state; am not positive. In hanging, death is produced by strangulation; sometimes by dislocation of the second vertebra, and sometimes by apoplexy; sometimes by laceration of the windpipe. The eyes frequently protruded, staring and blood-shot in death from apoplexy; but the pupils are contracted, not dilated. I judge that strangulation was produced by the fingers; can't tell how the tongs could produce strangulation; if they could obliterate the air-passage it might; if the tongs had been used there would have been marks directly across the throat. I examined the back part of the neck, saw nothing but infiltration of blood; the neck was not dislocated; I cannot say positively they were fingers; but I am not acquainted with any instrument that would have produced similar marks; the marks on the throat were not at all like any marks of the tongs; the marks were deeper than the discoloration, and some marks like a nail or gouge; I came to the conclusion they were made by fingers' marks; the fingers were larger than mine.

The infiltration of the lungs was caused by suppression of respiration; the more we find vessels filled, the longer respiration continued; might be slight respiration and not sufficient to stimulate the brain; death may take place very suddenly by excluding the air from the lungs. To fill the lungs there must be some respiration for a space of time. Think you could not suspend respiration suddenly by one or two hands on account of struggling, &c. There was no more room in the lungs for healthy respiration; will not say that the individual Betsy Holder died from debility but from stran-

gulation. There were no marks of violence on the body; putting the hand on the mouth would not suspend respiration, unless the nose was stopped also. There would not be discoloration on the face without very considerable grasp; no marks on the neck to warrant me in saying an instrument was used; if a gouge was used would occasion abrasion of the skin; the marks were not more than skin deep; an instrument might make such marks if held very carefully and the person remained still. I used the term half-rounding instrument to show the kind of marks, and not to convey the idea of an instrument being used. Eberle's Practice is a good work; not very scientific. It is a work intended for students.

Mental excitement produces apoplexy, but there you have the effusion which rarely subsides. Fear and joy have produced apoplexy, but not frequently. In diseases of the heart it will not present an healthy appearance, and not find it as this was. Thickening of the walls of the heart may produce disease, but not suddenly. Have been in the habit of examining bodies, but did not find disease without the patient exhibiting external evidence of disease.

I derive my opinion in this way: knowing the healthy appearance of the organs, I apply the morbid appearances as given by others and from my own knowledge; I speak from actual observation and from books. I commenced the study of medicine in 1823 or '24. Have practised in the S. Dispensary of Philadelphia; examined a good many cases there; it was generally the rule all persons that died of important diseases were examined. Strangulation may produce death by apoplexy; death may be produced in different ways by strangulation; effusion outside the base of the membranes not evidence of apoplexy. To the best of my knowledge, I believe I caused that effusion in opening the skull cap.

Dr. W. A. Smith testified, that he was present at the post-mortem examination of Elizabeth Holder, and assisted Dr. Rodrigue in making the same on the 1st of August, about three P.M. Some objections were made to the examination. After giving a similar account to that already detailed of the appearance of the body upon the post-mortem examination, Dr. Smith testifies: I formed the conclusion that her death was produced by strangulation; the whole venous system was a good deal gorged with blood; more particularly the lungs; the external marks of violence on the throat, and the marks of fingers induced me to believe death was occasioned by strangulation; the brain did not present those appearances natural in apoplexy, nor did the substance of the brain itself appear to be injected; on the other hand, the brain was rather pale and devoid of arterial blood. I remember that distinctly, in consequence of Dr. R. taking the small scalpel and slicing off a part of the brain to ascertain the fact; I feel satisfied that it was not a case of natural apoplexy; but that the distension of the veins of the brain, their turgid condition, could be attributed to nothing more than some mechanical pressure upon the neck preventing the return of blood from the head to the heart. I think on the left side of the neck were evidently the marks of two fingers; and the marks of a finger and thumb on the right side of the neck. Dr. R. placed his right hand over the mouth and on the throat and remarked, that that man must have had a very large hand, and remarked that he had a large hand and his was larger. Cannot recollect any penetration through the skin; I remember that during our examination we were compelled to move the body; the contents came out of the stomach. It is generally laid down by our best authors that in cases of strangulation, there are involuntary discharges from

the bladder and bowels a short time previous to death. We did not discover that the blows had effected any fracture of the skull-bone, and in regard to that clot of blood, it was merely a venous effusion, in a fluid state not coagulated; my own opinion was that it was from a direct blow, or it might have been the effect of a counter stroke, *i. e.*, a stroke on the other side of the head. I hardly think any of the marks of violence on the head sufficient to have produced death. I am a regular graduated physician; commenced study in 1828. Have performed or assisted to perform a post-mortem examination in a similar case; thought of the matter of apoplexy before it was mentioned here; think it did occur at the time of the post-mortem examination; subject of apoplexy came up at our examination, because Dr. R. made an examination of the ventricles of the brain to see if there was apoplexy; no coagulated blood.

Dr. Rodrigue called again.—As far as I remember, the lips were swollen and livid; no part more swollen than another. The wounds on the neck could not have produced death by lesions. The contusions were the evidences of force. In a mixed case of strangulation, we cannot say one organ suffers more than another; but the mere contusions would not have produced death. In this it was the injury produced on the brain, lungs, heart, and nervous systems. The principal nerves in the throat are the nerves, from the brain to the lungs; the pneumogastric eighth pair or par vagum. If sufficient degree of violence be applied to that nerve, death may be produced; if cut, instant death may be produced, particularly if separated near the lower jaw. They may be affected by mere pressure and produce death more slowly; it would then act by suffocation; destroying the connection between the brain and lungs. In apoplexy the bowels are usually costive; most generally so. In suffocation alone there is always congestion of the lungs. In suffocation alone no congestion of the brain. There was congestion of the brain in this instance. In mixed cases, we have congestion of the brain and lungs from strangulation; strangulation can produce both apoplexy and suffocation, and that would be what I would call a mixed case.

Looseness of the bowels not a predisposing cause of apoplexy. The suppression of that is a predisposing cause; a looseness of the bowels sometimes takes place in apoplexy; the eighth pair of nerves includes the carotid arteries.

From the marks of violence in this case it would have been unavoidable not to have grasped those nerves; no marks behind.

On the part of the prisoners but little testimony was produced. They account for their conduct in lurking around the country, by the fact, that the volunteers of Centre County had been out, partly with the intention of arresting them, and that on the night when the murder was committed, they were drunk and incapable of committing such an act, and that their clothes had been stolen from them, and they were ashamed to appear in public after losing their clothes; and again it was contended that no one saw them committing any outrage; that Elizabeth Holder died of apoplexy; and further it was contended by their counsel, that supposing the prisoners had killed her in the perpetration of a trespass, and that apoplexy was the accidental result of violence not intended to kill her, it was not wilful, or murder in the first degree.

Judge White, in addressing the jury, after defining murder at common law, &c., said: "It is for the jury to decide the degree of murder by their verdict from the evidence laid before them, and if the homicide took place in the commission or attempt to perpetrate the four offences (the last counts not being insisted upon), it is their duty to return a verdict of murder in the first degree, and the same if they find it was wilful, deliberate, and premeditated killing, the result would be the same.

"The indictment is in legal form, and if the means of death proved, agree in substance with the charge, it is sufficient; if the offence was by one of the persons, and the other was present, aiding, abetting, and assisting, the first count in the indictment must be sustained.

"The object of the indictment is to inform the prisoners of the offence charged, but the commonwealth is not required to prove the fact precisely as laid; if the kind of death proved agrees with the species charged, it is sufficient. If laid to have been effected by means of one kind of poison, as arsenic, and the proof is corrosive sublimate, it would be sufficient to convict the perpetrator. . . . The first question of fact for your consideration is, was there a murder committed?—If the deceased died a natural death, if her death was owing to natural apoplexy, of course the prisoners are to be acquitted. . . . After the inquest was held an examination was made by Drs. Rodrigue and Smith, and the result has been detailed to you by them.

"There are some questions, which a jury cannot decide from ordinary testimony, and among those in many cases, is the question whether death has resulted from violence or natural causes, and to ascertain the fact, medical men are usually appealed to to declare from their knowledge of the anatomy and pathology of the human frame. It is the business of their lives to acquire the requisite knowledge, and therefore the law places great reliance in such cases to the testimony of medical men, and without it, in many cases, the actual cause of death could not be ascertained. There is no evidence in the cause that the deceased had complained of any indisposition for any short time previous to her decease.

"If the death resulted from strangulation the charge would be supported, though it may have produced apoplexy, and that was the immediate cause of death, as upon an indictment for thrusting quantities of moss into the mouth of the deceased, (a child,) whereby it was choked, suffocated and strangled, and the evidence was, that the child was found with moss crammed into its mouth exceedingly hard, and a surgeon stated that the child did not die immediately from the moss, but that from the effects of the moss in the throat the parts were so much injured as to prevent swallowing and breathing, and that the bruises of the throat closed the passage and caused the death of the child; the conviction was held proper; so a wound, not mortal in itself, from *improper treatment*, turns to a gangrene or a fever; the party who inflicted the wound is guilty of homicide. It was sufficient

if the act done by the malefactor was the mediate cause of death, though it may not be the immediate cause. If, from the evidence, you believe that the violence on the throat of Elizabeth Holder occasioned her death, the offence of murder is made out; and the important question arises, was that act of violence committed by the prisoners at the bar? or were they participating in it?

"It is not pretended that any person saw them commit the act, and the charge is therefore supported by circumstantial evidence.

"This is the case on the part of the commonwealth, and from those facts and circumstances the prosecution contends that the murder of E. H. is established; that she was killed in the commission of a burglary, and that, therefore, it is murder in the first degree; and on that, even if it was not in the commission of a burglary, yet the means of death prove that the perpetrators committed the murder in such a manner as shows hearts regardless of social duty, and fatally bent on mischief. That the manner of the killing shows it was wilful, deliberate and premeditated, and therefore independent of the burglary, it was murder in the first degree, under the Act of Assembly, and that all the facts and circumstances in the case point out Patrick and Bernard Flanagan as the perpetrators of the murder to the exclusion of every other hypothesis.

"It has been urged that the individuals concerned in the murder may have entered the house as trespassers, and that, therefore, they cannot be convicted of murder in the first degree, as no express malice has been proved.

"Under our Act of Assembly as stated to you, the law is changed, and except in the cases enumerated, the malice required to constitute murder must be directed against a human being in order to make the slayer guilty of murder in the first degree; if the homicide is proved to have been *wilful, deliberate and premeditated*, no further proof of malice is required; it is not necessary to show any spite or grudge on the part of the slayer towards the deceased.

"In the present case. If the prisoners put E. H. to death by means of strangulation, the act itself, continued as it must have been for some length of time, would give time for reflection, and would show that the murder was wilful, deliberate and premeditated, and would constitute murder in the first degree under the act of 1791."

The case was then left to the jury, who, after an absence of two hours and a half, returned a verdict of "guilty of murder in the first degree."

His Honour, Judge White, then proceeded and passed the sentence of the law upon the prisoners, and they were remanded to jail to await the orders of the executive. On the 29th December, 1842, the sheriff of Cambria county received their death warrants, and the 3d of March, 1843, appointed for the execution of the prisoners. On the 27th February, 1843, a respite to 21st April, 1843, from the governor was received. On the 5th day of

April, 1843, the legislature passed a law directing Judge White to entertain a motion for a new trial, and in case of his refusal, directed the president judge of the fourth district to entertain the motion.

Judge White refused, and Judge Woodward, the president judge of the fourth district, declared the Act of Assembly of the 5th April to be unconstitutional, and refused to obey it.

On the 14th of April, 1843, the governor further respite them, but naming no particular date. On the 6th of April, 1844, a subsequent legislature passed an act authorizing one of the judges of the Supreme Court of Pennsylvania to come to Cambria county, and in connection with one or more of the associate judges of the county, to hold a special court of Oyer and Terminer to hear and determine a motion for a new trial.

Chief Justice Gibson, in a communication to the legislature, also declared this law unconstitutional, and suggested the passing of an act requiring *one* of the judges of the Supreme Court of Pennsylvania to hold a special court of Oyer and Terminer in Cambria on some day prior to the 4th day of July, 1844. This act was passed.

On the 1st day of July, 1844, the motion for a new trial was entertained before Justice M. E. Rodgers, and on the 10th of July Judge Rodgers delivered an able opinion overruling the motion, and directed the record in the case to be remitted back to the Court of Oyer and Terminer of Cambria county for execution.

The motion for a new trial was based upon declarations hostile to the prisoners, made by jurors before they were empaneled; declarations of witnesses inconsistent with their testimony on the former trial; excitement and prejudice against the prisoners at the time of the trial; and after-discovered testimony, all of which they failed to prove.

On the 7th of October, 1844, about eight in the evening, Jane Flanagan, a sister of the prisoners, obtained the keys of the room in which her brothers were confined, opened the door and the prisoners deliberately walked out with their irons on; a few hundred yards from the jail, they sat down in an out-lot, filed their irons off, and being joined by a person armed with a gun, made their escape to some friends in the neighbourhood, where they continued concealed until a tardy search, instituted five days after, was over.

The morning following their escape, the sheriff received their death warrant, which fixed their execution on the 8th of November following.

Thus ended a case which, for interference of legislatures, determination by some to shield the murderers, and the unpardonable negligence, to say the least, of officers, has no parallel in this country.

ART. X.—*Facts relative to the Contagiousness of Typhus Fever, confirmatory of Dr. Flint's observations on the subject.** By SAMUEL JACKSON, M. D., of Philadelphia, formerly of Northumberland.

IN the last number of this Journal, there is an interesting history of an epidemic typhoid fever which prevailed at North Boston, Erie County, New York, in the autumn of 1843, by Austin Flint, M. D., of Buffalo. It was made a question whether the disease could have been introduced into that town by a traveler who lay sick and died therein. Having myself no hesitation in giving full credence to the opinion that this disease is essentially contagious, and having, as I believe, seen epidemics excited by such means, I have thought it might not be unimportant to add to the communication of Dr. Flint, what little has come under my own observation. I am the more willing to do this, as in my various intercourse with physicians, I have found a striking discrepancy in their opinions with respect to the contagiousness of this fever, and even with respect to its essential existence.

If it be inquired what is to be understood on the present occasion by *typhus fevers*, we answer—those varieties of Dr. Cullen's *typhus petechialis*, called by him *mitior et gravior*, both long known and most admirably described, as far as relates to their symptomatology, by Dr. Huxham, under the names *febris lenta nervosa et febris putrida maligna*. As all our experience in this fever was obtained and digested under the old name, we cannot divide the disease on the present occasion into *typhus* and *typhoid*; we have been accustomed, moreover, to consider these as one fever in their cause, essence, and general effects. Nor is it our present business to show, whether they be one or two diseases, but merely to prove that there is a contagious fever with which we have been conversant, that has long been known under the name of *typhus*. The advocates of the late division into *typhus* and *typhoid* will be able to use our facts as certainly as those who do not acknowledge this division. In another place, we have given our reasons for believing them one fever as certainly as the scarlatina mitis and the cynanche maligna are one and the same.

We would here guard the reader against the presumption that we have been accustomed to confound the typhus with the marsh miasmatic fevers. We do not believe that these can ever be converted into typhus, and Dr. Flint, in the paper referred to, has very clearly ascertained the distinction. My private preceptor, the late Professor Barton, used to say, that typhus was the most contagious fever he had ever known, and the same doctrine was inculcated by Dr. Rush, (see his edition of Pringle, note 121.) If it be objected that Dr. Rush is here speaking of the *camp* fever, we have

* See preceding number of this Journal, p. 21.

only to remind the intelligent reader that we consider these fevers are one disease. We shall now relate a few instances which may serve to confirm Dr. Flint's opinion that his fever was imported into North Boston.

I. In the winter of 1828, there came a man sick of fever from Pottsville to his father's house, among the salubrious hills of Shamokin, about six miles east of Northumberland. He was attended by the two Drs. Robbins, of Sunbury, and died. The rest of this large family soon sickened, and from this house the fever soon spread among the neighbours, who had kindly attended upon them. Almost every case, as I was assured by the physicians, was accompanied by hemorrhage from the bowels, and certainly in my own practice therein, not one escaped this alarming symptom. To prevent this danger, it was my rule to bleed from the arm if called in time and the state of the patient did not forbid. Large and frequent blisters to the abdomen I never dispensed with, unless the case appeared mild and entirely free from danger. In one case wherein the patient, John Straw, was not considered seriously ill, both these prophylactics were omitted, but *væ medico*, on approaching the house in full hopes of finding him in a promising way, I was astounded with the news that he was dying. A tremendous hemorrhage had suddenly broke forth from his bowels, and he died in a few hours.

In this disease, I very easily recognized the *febris lenta nervosa* of Huxham, which I had often seen during the whole course of my previous practice of 16 years. It was calculated that not less than seventy persons were seriously ill of this fever, but how many died, I never satisfactorily ascertained. It was a region of which I knew but little, pertaining to the towns of Sunbury and Danville. The propagation of contagion is certain in country situations if a family is ill; for in such cases the benevolent neighbours attend day and night in rotation, generally in three or four times the necessary number, nor are they at all alarmed by the idea of contagion. They will often crowd all the sick into one apartment, which, in cold weather, is intemperately heated by a close stove. All these facilities obtained in this epidemic.

II. In the winter of 1829, Nathan Sterner went from Pottsville, where he had resided, to his father's house near Lewisburgh, and within 12 miles of Northumberland. He was soon taken ill of typhus mitior, and the family physician was called. I visited him in consultation about the 10th day, and he lived about ten days longer, exhibiting a fair specimen of typhus mitior. This family, who were strangers to me, I could not govern as I had been accustomed to do my neighbours, and hence they neglected my prophylactic advice almost entirely. The large family room was the sick man's chamber, and it was not *warmed* but *heated* by a close stove; the consequence was, that every member of the household and a few of the neighbours, who had assisted the sick, were seized of the same fever. They were all recovered under the care of Dr. Joyce, of Lewisburgh, and

principally by the corroborant method, thus showing that it was a typhus fever.

III. In the winter of 1821, Abraham Gulick, a respectable farmer near Danville, and ten miles above my residence at Northumberland, lay for several weeks in a low fever with hemorrhagic diarrhœa, in which he was attended by Dr. Petriken, of Danville. He lay in a room well heated by a close stove, and, as he was a man highly respected, he received the assiduous attention of his neighbours. Soon after his death, nearly every member of his large family and many of his neighbours who had spent much time in waiting upon him, were seized of the same disease in all its characteristics, particularly the bloody stools. Of these so many died that the whole vicinity was thrown into the utmost consternation. But the number of either the sick or the dead, I cannot recollect, and from certain circumstances, I apprehend that both were greatly exaggerated.

Some of these patients fell under my care in conjunction with my medical friends; and some who lived within the periphery of my own practice, I attended throughout their sickness. The fever was almost uniformly attended by slow hemorrhage from the bowels, and few patients recovered under 20 days, while some continued twice this period. The cases which I attended were mild and none proved fatal, therefore we can say nothing of the pathological lesions; nor, indeed, should we at that time have looked further than the brain for any organic cause of death. Peyer's and Brunner's glands were not then considered, and as to the hemorrhage, this was looked upon as a mere diapedesis, and therefore its origin not to be ascertained by dissection.

With respect to the contagiousness of this fever, there ought never to be a question. It must, however, be ever remembered that cleanliness and fresh air are almost certain prophylactics, and that the nurses who carefully use them will have little to fear. I do not recollect that I ever saw a case in my own practice, that communicated the disease. This good fortune is not arrogated as an honour to myself but to my preceptors in medicine. In the winter of 1819, I attended a son of one Mowrer, in Robin's still-house, near Sunbury. Both around and within the house, there was a vast collection of filth; the family consisted of the parents and ten children from three years old upwards, and they all ate and slept and dwelt night and day in the same room, well heated with a close stove. The patient was recovered after a long stupor and mild delirium, by favour, as was supposed, of an abscess caused by repeatedly blistering the suræ.

Very soon the father and mother were both seized of the same disease; they fell under the care of a Dr. K., of Sunbury, and soon died. Some days before this event an adult daughter sickened and was also attended by Dr. K. till late in her disease. When at last I was called by the guardians of the poor, she was hopeless and died in a few days. By this time some more of the family had sickened, and the filthy chamber, beds,

&c., being considered as the nidus of infection, the whole family, sick and well, were moved to a new house on a neighbouring hill leaving all their fomites behind them. Here the rest of the children quickly sickened, and we had nine patients for three or four weeks in the same room; even the first patient who had recovered under my care, went regularly through the disease again. They all recovered their health perfectly in a short time. But what I particularly wish to be observed in this case, are these facts: 1st, that this fever appeared to originate in the foulness of the old house in the depth of winter when the external air was excluded; and 2d, that four young women whom the guardians of the poor employed to nurse them after their removal and purification, entirely escaped the disease.

In the winter of 1814, when the volunteers and drafted militia were dismissed from their encampments near Philadelphia and Black Rock on the Niagara river, many of them had scarcely reached their homes in Northumberland and its vicinity, ere they were seized with the camp or typhus fever, in which several of them lay many weeks, exhibiting fair specimens of the slow nervous fever of Huxham. The disease was mild, not one died, hence we can give no history of the internal lesions; but the *prima facies*, to use a botanical expression, was that of typhus mitior, and the corroborant method of cure served to prove the nature of the disease, and to show its place in the nosological arrangement. Its cognation, indeed, can hardly be mistaken at first sight. Dr. Rush used to say that a painter could give the likeness of yellow fever in the countenance,—so we may say of the present disease. But to return to the subject of contagion, not one of these patients communicated the fever, though their sickness was in the depth of winter.

We are aware that the unbelievers in contagion and the advocates of the unitarian doctrine of fevers, have the means of explaining away the above facts to their own satisfaction; and did these facts stand alone in the history of contagion, we should not consider their reasonings as unworthy of a patient consideration; but since many others have seen and reasoned as we have done, it may not prove a work of supererogation to throw our mite of experience into the balance.

But it is inquired, *whence comes this contagious fever, and what is it? We have never met with any contagious fever in our own practice; all the fevers we have seen appear to be of one stock, and all are cured by the same means. Even Dr. Armstrong contends that what is called typhus, of which he has treated so largely, is the same in origin as that from marsh miasma.* What proportion of physicians reason thus, we know not, but the collective sect cannot be small. Dr. J. McCulloch says that the error of mistaking remittent fever for typhus “is so universal, that we trace it through almost every medical book, and so common, even to this hour, as to be committed every day by nine-tenths of practitioners.” (On Malaria, p. 190.) We hope, and even believe that the number is greatly

exaggerated. The error arises with some, from a misunderstanding of that hasty generalization which reduces all fevers to a unity of morbid excitement. How much time and how much reasoning Bacon has expended in trying to endue the human mind with patience of investigation and forbearance in the establishment of second causes! yet here, where every one is quite vain-glorious in proving himself a Baconian, the principles of the great philosopher are lost in the ambition of theorizing.

Thirty-three years experience have taught and confirmed us in the opinion that there are two genera of fever—the *inflammatory* and *typhus*, the latter professing something to which the other has no tendency, some incomprehensible unity which destroys the patient, sometimes independently of any ascertainable organic lesion.

One of Dr. Flint's collaborators considered his epidemic as remittent miasmatic fever "attended with typhoid symptoms." That the remittent fever is sometimes attended by "typhoid symptoms," taking the adjective in its etymological sense, there can be no doubt; but the opinion that Dr. Flint's epidemic was a fever from marsh miasma, we must consider as a dangerous error. The mere word *typhoid* is perilous in practice, for no sooner is a case of remittent fever supposed to claim this epithet, than it is associated at once with tonics and stimulants, which are not remedies, but absolute poisons. For, though the patient may be greatly broken down and appear most alarmingly typhoid, yet there is nothing typhous in the case, and the supporting treatment appropriate to typhus, will certainly aggravate the fever, and hurry the patient to the grave. When kind nature is gradually wearing away the inflammation that aggravates and prolongs the fever, nothing can be more mal-appropriate than wine, and snakeroot, and chicken water, and oyster juice, and quinine. It was in such cases that Baglivi exclaimed of the bark—*remedium damnabile et perniciosum*. The patient in remittent fever who is taking such tonics, is certainly almost beyond hope. There is latent inflammation of the brain or its membranes, or of the stomach and bowels, which precludes all hope from tonics and stimulants.

Thus, the typhous fevers are the very antipodes of the inflammatory, as it regards the method of cure. We are now speaking of the remittent fever as it *generally* appears in temperate climates, *nec vivo nec scribo in aëro Romano*, but there are occasional exceptions, and these prove the rule. The remittent patient does sometimes fall into a state requiring early stimulation, and many such cases we saw during ten epidemics. The aged and debilitated, and particularly those whose constitutions were broken by intemperance, often needed immediate support; some of them, indeed, did not survive the first chill. But when the young and comparatively vigorous, are suddenly prostrated, it is owing to the violence of the remote cause, to idiosyncrasy, to mal-treatment, or some accidental circumstance; but this is neither typhus nor typhoid; the remote cause is, in such

cases, easily ascertained, and the cognation of the disease is recognized in the countenance. So true is this index to the nature of the fever, that I have tried in vain to persuade parents for their comfort, that their typhous children were merely labouring under a common remittent, a disease of which they had little dread. Almost every idiopathic fever has its peculiar countenance, the puerperal fever, and the yellow fever, as we have stated above, but particularly the typhous fevers, which are strikingly distinguished thereby from all others; their peculiar aspect distinguishes them from the first day to the last. It is the very same in the typhus of Louis as in his typhoid, however different their duration and their mortal lesions.

Dr. Armstrong seems to distinguish between typhous and remittent fevers when he maintains the opinion, that they have one common origin in marsh miasma. He says "it might be interesting to know, why in one person typhus assumes an *intermittent*, in another a *remittent*, and in a third, a *continued* character. This may depend on two circumstances, 1st, on the degree of concentration in which the miasma is applied, and 2d, on the condition of the body at the time of application. If it be applied in a low degree of concentration, or to a subject whose internal organs are sound, it seems to produce an intermittent fever: but if applied in a very concentrated form, or to a subject whose internal organs are weak, then it puts on the remittent or continued character."

If these two apparently distinct fevers can spring from marsh miasma, how is it that typhus is almost never found on the banks of our rivers in the summer and autumn, not even two or three cases during long-continued and severe epidemics of remittent fever? We saw this pervading the country most deplorably during ten summers and autumns, and only two cases of the many thousands that came under our care, did we consider as *typhus*, and these occurred in the cold weather of November. Now, had marsh miasma the power of kindling *typhus*, it might be expected that we met with it frequently during the summer and autumn, when the whole atmosphere for five or six months was a mere ethereal tincture of this poison, and when thousands of all varieties of constitution suffered, many of them, repeated attacks of remittent fever during ten epidemics. Surely, among all these, there were some "*whose internal organs were weak.*" But, let us carry the doctor's argument into jails, ships, and into the subterranean mansions of the Spitalfield weavers, surely there may be found here some robust subjects, who ought, according to his theory, to assume an intermittent, to be cured by an ounce of bark. When the judges and lawyers, and juries at Oxford, Exeter, and the Old Bailey, were infected in the open air of the courthouse, by the mere smell of the foul clothes which covered the prisoners who were yet in health, surely this temporary exposure of full-fed gentlemen ought to have produced a mild intermittent. The truth is,

that the disease corresponds with the remote cause; whoever inoculates for small-pox does not expect a crop of measles.

We hope we are not pursuing this subject too far; Dr. Flint thinks it highly important to settle the question involved in this paper, and Dr. McCulloch says (on Malaria, p. 190), that the error of mistaking remittent fever for typhus, confuses the whole history of endemic and epidemic fevers; that it has produced a train of incalculable evils in the cure, as well as far deeper ones in their prevention; that medical history is full of glaring examples of this; and that we must, consequently, read with distrust nearly all that has been written on the diseases of armies. If only the half of this be true, for we are very willing to make liberal deduction on account of an author's zeal, the subject requires both abilities and preparation which the present writer does not possess. He will, however, offer a parallel between the two diseases which may possibly show that, like parallel lines, they can never coincide.

We subjoin in parallel columns, the distinguishing symptoms of typhus and remittent fevers:—

TYPHUS.

A disease of cold weather and the colder climates; it seldom ever springs up even in single cases in the summer months.

It evidently arises from clothes, &c., foul with perspirable matter and shut up from the air, or long worn in confined situations, as jails, ships, &c.

It is contagious, and particularly so in cold weather, when little or no ventilation is used.

Move a healthy person from a healthful region to a place where he may smell clothes long foul with human perspiration, and he will probably contract a disease with which he can infect his friends on returning home.

Negroes more certainly take this fever and generally have it more severely than the white inhabitants.

Typhus seldom invades old people, and not often children under two years old.

Typhus never runs into an intermittent, and bark has no specific agency in its cure.

REMITTENT.

It is a disease of hot weather and warm climates, and the hotter the weather the more violent the disease generally is.

It arises evidently from marshy grounds, the dried beds of rivers, and from argillaceous lands which break into deep fissures under a burning sun, and exhale something known only by its effects.

It is never contagious, not even when protracted into cold weather and several are confined in the same close and heated room.

Take a healthy man from a healthful region into an atmosphere of marsh miasma, and he will contract an intermittent or remittent fever which he cannot communicate on returning home.

White people suffer more from remittent and intermittent fevers and are more certain to take it from the same exposure.

It invades all ages, from ten days old to the extreme verge of human life.

Remittent fever often runs into the intermittent form, and is forthwith cured by bark.

The urine in mild cases unattended by much inflammation, is pale and whey-like.

Typhus more generally affects the brain and its membranes, the lungs, the region of the ilio-cæcal valve, and the crasis of the blood.

In typhus there seems to be a slow, concealed, and suffocated combustion, hence the word is derived from *τυφω*, to smoke.

It comes on generally without shivering, and without pain; but with debility, lassitude, depression, stupor, indisposition to exercise either body or mind, and in the *mitior* there is often a diarrhœa which is not bilious.

In the *mitior*, there is frequently an eruption of rose-coloured spots over the abdomen and breast. In the *gravior* and the *petechialis* there are frequently vibices and petechiæ.

It is very often attended by low delirium, carpologia, subsultus tendinum, and nervous symptoms generally.

Hemorrhage is very generally a dangerous symptom.

It bears very little bleeding or medical debilitation in any way, whether the cases be mild, severe, or most severe.

The urine is red in remittents, as it is in all inflammatory fevers.

Remittents generally affect the liver, spleen, stomach, and membranes of the brain.

In remittents there is generally pretty severe inflammation, open, and blazing—not concealed and smouldering.

It invades with shivering, and with pain in the back, limbs, and head. It often invades with a vomiting and purging of bile.

In this there is no peculiar eruption.

Remittents are very seldom attended by low delirium, subsultus, carpologia, or any symptoms peculiarly nervous.

Hemorrhage is seldom dangerous, often highly beneficial.

This bears very free depletion in every way, and when internal inflammation threatens, large, and frequent bleedings are salutary. Malignant cases are exceptions to the general rule.

ART. XI.—*Plastic Operation for Ectropion.* By DANIEL BRAINARD, M. D.,
Professor of Surgery in the Rush Medical College. [With a wood-cut.]

THE subject of this operation was a young man about 20 years of age, who had received a severe burn from falling upon a bed of burning coals, by which a great part of the left cheek was entirely destroyed, and a cicatrix produced, which, by its contraction, occasioned a complete eversion of the inferior palpebra of that side, and a considerable contraction of the corresponding angle of the mouth.

Five months after the accident, January 2d, 1845, he applied for relief. At this time the eversion of the lid was complete, its ciliary border being firmly adherent to the inferior margin of the orbit, and its inferior edge